

## **9 FAM 42.1 Notes**

(TL:VISA-184; 01-22-1999)

### **9 FAM 42.1 N1 General**

(TL:VISA-184; 01-22-1999)

The regulations of the Attorney General contained in 8 CFR 211.1 [see 9 FAM 42.1 Exhibit I] relating to waivers of documentary requirements for immigrants provide for admission of certain aliens without visas. *An unexpired immigrant visa, reentry permit, border-crossing card, or other valid entry document is required of an immigrant under INA 212(a)(7) except as indicated below.*

#### **9 FAM 42.1 N1.1 Child of Lawful Permanent Resident (LPR) or U.S. National Mother**

(TL:VISA-184; 01-22-1999)

The child of an LPR or U.S. national mother is not required to have a visa if the child is:

- (1) Born subsequent to issuance of an immigrant visa to the accompanying parent within the validity of the parent's immigrant visa [see also 9 FAM 42.1 N3]; or
- (2) Born during the mother's temporary visit abroad **provided**:
  - (a) Admission is within 2 years of birth;
  - (b) Either accompanying parent is applying for readmission upon first return after the birth of the child; *and*
- (3) Accompanying a parent *who is* admissible to the United States.

#### **9 FAM 42.1 N1.2 Immigrants Possessing Alien Registration Receipt Card**

##### **9 FAM 42.1 N1.2-1 Returning Resident Aliens**

(TL:VISA-184; 01-22-1999)

An Alien Registration Receipt Card may be presented in lieu of a visa provided the alien is *returning*:

- (1) To an unrelinquished residence in the United States *after a temporary absence abroad not exceeding two years*;

(2) Prior to the second anniversary of the date on which he or she obtained conditional residence under INA 216; or

(3) Within six months of the date of filing a joint petition to remove conditional status *obtained under INA 216*; and in possession of a receipt for such filing.

**9 FAM 42.1 N1.2-2 Crewmembers**

*(TL:VISA-184; 01-22-1999)*

A visa is not required of a resident alien crewmember who is:

- (1) Regularly serving aboard an aircraft or vessel of U.S. registry; and
- (2) Returning after a temporary absence abroad in connection with duties as a crewmember.

**9 FAM 42.1 N1.2-3 Civilian Employee of U.S. Government or Member of U.S. Armed Forces**

*(TL:VISA-184; 01-22-1999)*

a. A U.S. Government employee or a member of the U.S. Armed Forces may present an alien registration card in lieu of an immigrant visa *provided they are*:

- (1) *Traveling on U.S. Government orders; and*
- (2) *Returning from a foreign assignment to an unrelinquished lawful residence in the United States.*

b. See also 9 FAM 42.1 N3.

**9 FAM 42.1 N1.2-4 Spouse or Child of U.S. Government Employee or U.S. Serviceperson**

*(TL:VISA-184; 01-22-1999)*

a. The spouse or child of such U.S. Government employee or member of the U.S. Armed Forces does not require a visa **provided** the spouse or child:

- (1) Resided abroad while the employee or service person was on duty abroad; and
- (2) Is preceding, accompanying or following-to-join the employee or service person.

b. See also 9 FAM 42.1 N3.

## **9 FAM 42.1 N1.2-5 Replacing Alien Registration Receipt Card**

(TL:VISA-184; 01-22-1999)

See 9 FAM 42.1 PN1.

## **9 FAM 42.1 N1.3 Immigrant Possessing Reentry Permit**

(TL:VISA-184; 01-22-1999)

*An immigrant* returning to an unrelinquished lawful permanent U.S. residence after a temporary absence abroad not exceeding two years may present a valid, unexpired reentry permit in lieu of an immigrant visa.

## **9 FAM 42.1 N1.4 Refugee**

(TL:VISA-184; 01-22-1999)

A refugee travel document issued to a lawful permanent resident shall be regarded as a reentry permit.

## **9 FAM 42.1 N1.5 Immigrants Without Valid Travel Document**

(TL:VISA-184; 01-22-1999)

An immigrant returning to an unrelinquished residence in the United States who does not possess an immigrant visa, an Alien Registration Receipt Card or a valid reentry permit may be granted a waiver *under INA 211(b)*, if the INS district director of the port of entry is satisfied that there is good cause for failure to present the document.

## **9 FAM 42.1 N1.5-1 Beneficiaries of Private Law 95-53**

(TL:VISA-144; 6-28-96)

An alien employee of the American University of Beirut who seeks to enter the United States immediately following employment may present an Alien Registration Receipt Card or a boarding letter issued by the U.S. consul or immigration officer in lieu of an immigrant visa.

## **9 FAM 42.1 N1.5-2 Special Agricultural Workers**

(TL:VISA-144; 6-28-96)

Certain agricultural workers who adjusted status under INA 210, and remain under such status, may present Form I-688, Temporary Resident Card, in lieu of an immigrant visa if returning to an unrelinquished residence within one year after temporary absence abroad.

## **9 FAM 42.1 N1.5-3 Temporary Residents Adjusted under INA 245A**

(TL:VISA-144; 6-28-96)

Aliens granted temporary resident status under INA 245A, and remaining under such status, may present Form I-688, Temporary Resident Card, in lieu of an immigrant visa if returning to an unrelinquished residence within 30 days after absence abroad, provided that the aggregate of such absences does not exceed 90 days.

## **9 FAM 42.1 N2 Certain Alien Children Not Required to Obtain Visas**

### **9 FAM 42.1 N2.1 Child Under 2 Years of Age Born of Permanent Resident Alien Mother During Temporary Visit Abroad**

(TL:VISA-184; 01-22-1999)

See 9 FAM 42.1 N1.1.

### **9 FAM 42.1 N2.2 Requiring Reentry Document of Child's Parent**

(TL:VISA-184; 01-22-1999)

The provisions of 9 FAM 42.1 N2.1 apply only if the alien parent is in possession of a valid Alien Registration Receipt Card, a valid reentry permit, or a SB-1 visa. *With respect to 22 CFR 42.1(d), it is irrelevant whether the visa issued to the accompanying parent is an initial visa or a replacement visa.*

### **9 FAM 42.1 N2.3 Evidence of Parent-Child Relationship**

(TL:VISA-49; 10-30-91)

To facilitate the admission of children under the provisions of 9 FAM 42.1 N2.1, consular officers shall instruct parents to have with them documentary evidence of the parent-child relationship.

### **9 FAM 42.1 N2.4 No Immigrant Visa Required for Child Born After Parent Issued Replace Visa**

(TL:VISA-184; 01-22-1999)

It is irrelevant whether the visa issued to the accompanying parent is *the original* visa or a replacement visa.

## **9 FAM 42.1 N3 Members of U.S. Armed Forces, Their Spouses and Children**

### **9 FAM 42.1 N3.1 Interpreting Term “Member of U.S. Armed Forces”**

*(TL:VISA-19; 2-27-89)*

The term “member of the U.S. Armed Forces” as used in 22 CFR 42.1(b) embraces military personnel only. It does not include civilians employed by or attached to the Armed Forces or working for firms under contract to the Armed Forces.

### **9 FAM 42.1 N3.2 Spouse of U.S. Armed Forces Member or U.S. Government Employee Who Marries Abroad**

*(TL:VISA-184; 01-22-1999)*

The provisions described in 9 FAM 42.1 N1.2-4 relating to the spouse or child of a member of the U.S. Armed Forces or of a civilian employee of the U.S. Government stationed abroad, apply to an alien who:

(1) Has gone abroad accompanying or following-to-join such a spouse; *or*

(2) Marries a member of the U.S. Armed Forces or a U.S. Government civilian employee while abroad, even if the alien has been abroad more than one year, provided the alien would have been eligible to receive a visa as a returning resident alien at the time the marriage occurred.

### **9 FAM 42.1 N3.3 Use of Alien Registration Receipt Card by Alien Armed Forces Members Discharged Abroad**

*(TL:VISA-144; 6-28-96)*

An alien member of the U.S. Armed Forces previously lawfully admitted for permanent residence and serving abroad is considered to be constructively present in the United States. Such an alien discharged abroad may apply for readmission using the Alien Registration Receipt Card, provided the stay abroad does not exceed one year from the date of discharge.

## **9 FAM 42.1 N3.4 Spouse and Children of U.S. Armed Forces Members or U.S. Government Civilian Employees Stationed Abroad**

(TL:VISA-184; 01-22-1999)

In interpreting the provisions of 8 CFR 211.1(b)(1) waiving the visa requirement for the spouses and children of Armed Forces members or U.S. Government civilian employees serving abroad [see 9 FAM 42.1 N1.2-4], INS has held that:

(1) The spouse or child need not physically accompany the Armed Forces member or civilian employee in order to benefit from the visa waiver if the alien is preceding or following-to-join *the member or employee*.

(2) An alien who does not physically accompany the Armed Forces member or employee to the United States must possess evidence that he or she *is the spouse or child of a member or employee who was stationed abroad* on official orders and that the spouse or parent was previously lawfully admitted for permanent residence.

(3) To benefit from the waiver, it is not material whether the member or employee was discharged abroad, or whether the spouse or child is residing in a country different from that in which the principal alien is stationed, provided all other criteria for the waiver are met.

## **9 FAM 42.1 N4 Parole**

(TL:VISA-184; 01-22-1999)

a. In addition to the categories of aliens listed in 9 FAM 42.1 N1 who are not required to obtain immigrant visas, there is a parole procedure permitted by INA 212(d)(5) under which aliens may also enter without having obtained a visa. Humanitarian parole authority rests with INS district directors at U.S. Embassies in Mexico, Rome, and Bangkok. Jurisdiction over public interest paroles is retained by INS\HQS.

b. *Parole should not be used to circumvent normal visa issuing procedures, including non-current priority dates for preference IV categories. Nor should it be used to avoid meeting host country or U.S. legal requirements in adoption cases [see also 9 FAM 42.1 N5.7].* Consular officers must inform potential applicants that a recommendation by the consular officer does not guarantee a granting of parole.

## **9 FAM 42.1 N4.1 Advance Parole**

(TL:VISA-184; 01-22-1999)

*In some instances, INS authorizes advance parole to persons in the United States whose immigration status is under review (e.g., pending an asylum hearing, or an adjustment of status) but who needs to travel abroad. Persons seeking advance parole must apply before departing the United States. Advance parole is generally approved for a specific period of time, and the alien must return to the United States before its expiration. Such persons may seek assistance from consular officers after such parole has expired. Consular officers **DO NOT** have the authority to approve or extend parole. The consular officer should refer the applicant to the appropriate overseas INS District Office.*

## **9 FAM 42.1 N4.2 Humanitarian Parole Criteria**

(TL:VISA-184; 01-22-1999)

*a. Parole authority is an extraordinary measure, sparingly utilized to bring an otherwise inadmissible alien to the United States for a temporary period of time due to a compelling emergency. The consular officer must stress to the potential parole applicants that authority to grant parole rests solely with the INS.*

*b. Consular officers should not suggest parole, however, they may assist applicants in applying directly to INS. [See 9 FAM 42.1 PN2.] Only under certain compelling circumstances can a consular officer recommend parole to INS [see 9 FAM 42.1 PN3]. This is an extraordinary measure that should be resorted to in only the most exigent circumstances. Parole should be a last option for persons who:*

- (1) Are otherwise ineligible for a visa;*
- (2) Cannot benefit from a waiver; and*
- (3) Have compelling reasons to travel to the United States.*

## **9 FAM 42.1 N4.3 Significant Public Benefit Parole (SPBP) Criteria**

*(TL:VISA-184; 01-22-1999)*

a. *Posts should be aware of the distinction between humanitarian parole and significant public benefit parole (SPBP). In rare instances, the Department may seek SPB parole in cases that have clear U.S. Government interest and the need to admit an individual to the United States as quickly as possible. More commonly, U.S. law enforcement agencies will seek SPB parole from the INS on behalf of aliens whose presence in the United States is required in connection with legal cases or investigations. [See also 9 FAM 42.1 N4.4 below.]*

b. *By law (INA 212(d)(5)(B), SPB parole cannot be used in lieu of normal refugee processing except in compelling circumstances with respect to a particular alien. In order to meet the Department's criteria, an individual must be in imminent danger and/or unable to travel to a third country for refugee processing through the United Nations. Posts will be notified of such cases via a VISAS NINETY-ONE cable authorizing the post to issue a transportation letter. [See 9 FAM PART IV Appendix N, Exhibit V.]*

## **9 FAM 42.1 N4.4 Law Enforcement Agency (LEAS) Cases**

*(TL:VISA-184; 01-22-1999)*

*Department recommended SPB parole cases should not be confused with the more commonly encountered SPB parole cases recommended by law enforcement agencies through Department of Justice channels (LEAS). LEAS cases involve an alien whose presence is necessary in connection with legal cases or investigations, and will generally come to a post's attention via a VISAS Ninety-one cable authorizing the issuance of a transportation letter. Other types of non-Department cases are those requested directly by intelligence agencies.*

## **9 FAM 42.1 N4.5 Parole Does Not Confer Immigration Benefits**

*(TL:VISA-184; 01-22-1999)*

a. *Consular officers shall inform persons granted humanitarian parole that entry in that category does not provide permanent resident status. Parole does not in and of itself confer immigration benefits, and is granted for a specific period of time. Parolees must depart the United States at the end of their parole authorization, adjust to immigrant status (usually based on a previously approved petition), or seek an extension of stay through a domestic INS office. Persons in parole status may not travel abroad and then return to the United States without advance parole from INS. [See 9 FAM 42.1 N4.1.]*



b. *Parolees who enter under SPB parole frequently seek political asylum in the United States, and, assuming their asylum claim is approved, eventual adjust status. Parolees are normally granted permission to work, but do not receive the resettlement assistance which is provided to refugees. Therefore, it is imperative that parole requests identify potential sources of financial support.*

c. *Aliens may apply for extensions of parole status, but requests are granted on a case-by-case basis, and are approved only for a specific period of time. If the "VISAS NINETY-ONE" cable limits the duration of stay in the United States, the consular officer shall so inform the alien.*

## **9 FAM 42.1 N4.6 Examination Requirement for Parolees**

*(TL:VISA-184; 01-22-1999)*

In the absence of any contrary instruction *from INS*, a parolee must have a medical examination performed by a post panel physician. [See 9 FAM 42.1 PN4.]

## **9 FAM 42.1 N4.7 Applicability of INA 212(a) to Parolees**

### **9 FAM 42.1 N4.7-1 General**

*(TL:VISA-184; 01-22-1999)*

a. Parolees are subject to the provisions of INA 212(a), other than INA 212(a)(5)(A), unless a ground of ineligibility is specifically waived by INS. *The fact that an individual is in opposition to his or her country's current regime is not in itself sufficient reason for a parole recommendation, particularly if the person has a past record of criminal activity or of participating in the persecution of others. The Department would not generally support a parole recommendation for persons who would be ineligible under 212(a) and who would likely be ineligible for asylum under INA 208(b)(2)(A). INA 208(b)(2)(A) generally precludes INS from granting asylum to an alien who:*

(1) *Has ordered, incited assisted, or otherwise participated in the persecution of others based on race, religion, nationality, membership in a particular social group, or political opinion;*

(2) *Has been convicted of a particularly serious crime and constitutes a danger to the community in the United States;*

(3) *Is believed to have committed a serious non-political crime outside the United States; or*

(4) *Is inadmissible under INA 212(a)(3)(B) or INA 237(a)(4)(B).*

b. *If a consular officer determines that ineligibilities exist, the consular officer shall inform the INS approving office and the Department (CA/VO/L/A) and make a recommendation on the case. [See also 9 FAM 42.1 PN3.2.]*

**9 FAM 42.1 N4.7-2 Applicability of INA 212(a)(4)**

*(TL:VISA-184; 01-22-1999)*

a. *Except in rare instances where INS waives potential ineligibilities, prospective parolees are subject to the INA 212(a)(4) public charge provisions, and must demonstrate that they have access to sufficient funds to cover the costs of their stay. This is especially critical if parole is sought for medical reasons. In such instances, the sponsor's offer to pay for the planned medical procedure must be supported by strong financial evidence of the sponsor's ability to pay. Since the cost of medical treatment can in some instances run into the six-figure range, consular officers must apply realistic standards in evaluating the sponsor's ability to pay.*

b. *In those instances where the applicant has applied directly to INS for humanitarian parole, and INS has indicated in the notification of parole approval that the applicant has the necessary financial resources, the consular officer should review the financial evidence to determine if they are indeed available. Should it become clear that the applicant cannot qualify under INA 212(a)(4), the post shall notify the approving INS Overseas District Office of the ineligibility. [See 9 FAM 42.1 PN3.2.]*

**9 FAM 42.1 N4.8 Assisting Applicant to File Parole Request**

*(TL:VISA-184; 01-22-1999)*

a. *Although under no obligation to forward a parole request on behalf of someone who is not the subject of the post's recommendation for parole, posts frequently refer the applicant directly to the appropriate INS office. When doing so, post should provide the applicant with the following:*

- (1) Information required for a parole request;*
- (2) Form I-131, Application for Travel Document, (if available at post); and*
- (3) Address of the appropriate INS overseas district office: [See 9 FAM PART IV Appendix N, Exhibit II.]*
  - (a) INS Mexico: ARA Region;*
  - (b) INS Rome: AF, NEA, SA Regions; and*
  - (c) INS Bangkok: EAP Region.*

*b. Interested parties in the United States may submit parole requests directly to INS, either through a domestic office or directly to the overseas district office with jurisdiction.*

#### **9 FAM 42.1 N4.9 Recommending Humanitarian Parole**

*(TL:VISA-184; 01-22-1999)*

*See 9 FAM 42.1 PN2.*

#### **9 FAM 42.1 N4.10 Requesting SPB Parole**

*(TL:VISA-184; 01-22-1999)*

*See 9 FAM 42.1 PN8.1.*

#### **9 FAM 42.1 N4.11 Processing VISAS NINETY-ONE Cases**

*(TL:VISA-184; 01-22-1999)*

*a. The Immigration and Naturalization Service will notify the post (and CA/VO when included as an addressee on the originating parole request) by a "VISAS NINETY-ONE" cable when parole has been approved on behalf of an alien. The cable will advise the post of:*

- (1) The identity of the parole beneficiary;*
- (2) The purpose and length of time for which parole has been granted;*
- (3) Any known grounds of excludability; and*
- (4) Whether the applicant has sufficient financial resources (when applicable).*

*b. The cable will request the post to issue a transportation letter authorizing the carrier to transport the alien without a visa. A copy of the " " cable should be attached to the transportation letter so that the airline will not be subject to the fine imposed by INA 273.*

*c. See 9 FAM 42.1 PN4 for processing instructions.*

## **9 FAM 42.1 N4.12 Validity of Parole Approval**

(TL:VISA-184; 01-22-1999)

*Although parole approval assumes that, given the emergent nature of the applicant's situation, he or she will enter the United States as soon as possible, occasionally the consular officer will encounter someone who delays their entry. In those instances where the consular officer determines that the circumstances upon which the original parole request have not changed and that a reasonable delay was beyond the applicant's control, the consular officer may process the case. However, if the prospective parolee has delayed entering the United States for an extended period, the consular officer should advise the applicant to reapply to INS for parole approval. INS will reevaluate the new request and, in light of the current situation, approve or deny the application accordingly.*

## **9 FAM 42.1 N4.13 Parole and Adoption**

(TL:VISA-184; 01-22-1999)

*Occasionally, adopted children may be granted parole to facilitate their entry into the United States with the adopting parent(s). Parole must not be used to circumvent local or U.S. adoption laws and requirements, and is not a panacea for problem cases. There are situations in which parole is a possible option, however, consular officers must consult with the CA/VO/F/P officer responsible for adoption issues.*

## **9 FAM 42.1 N4.14 Parole and Asylees/Refugees**

(TL:VISA-184; 01-22-1999)

*a. Posts are occasionally contacted by persons who entered to United States as refugees or who were granted asylum, and who subsequently departed without obtaining a refugee travel document, (Form I-571). Persons without refugee travel documents must seek assistance from the appropriate INS overseas district office.*

*b. Refugees and asylees who obtained a Refugee Travel Document, and traveled abroad, but who are unable to return by virtue of having an expired, lost or stolen refugee travel document, are **not** eligible for refugee processing. They are, however, eligible for humanitarian parole processing. [See also 9 FAM 42.1 PN6 for processing procedures.]*